



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers:
UI-2022-000928 (HU/01613/2021)
UI-2022-000929 (HU/03483/2021)

THE IMMIGRATION ACTS

**Heard at: Field House
On: 12th October 2022**

**Decision & Reasons Promulgated
On: 30th November 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

**AB
MF**

Respondents

**For the Appellant: Mrs A. Nolan Senior Home Office Presenting Officer
For the Respondents: Mr R. Khosar, DJ Webb & Co Solicitors**

DECISION AND REASONS

1. The Respondents are both nationals of Pakistan. They are husband and wife, and dependents to their linked claims are two minor children, both born in the UK. On the 16th November 2021 the First-tier Tribunal (Judge Clarke) allowed their linked human rights appeals. The Secretary of State now has permission to appeal against that decision.

Background

2. The Respondents both came to the UK as students; Mr AB first came in 2011 and Ms MF came in October 2017. The material facts giving rise to their linked human rights claims are these.
3. The couple met in May 2017 when AB had returned to Pakistan for a short time. They were then aged 22 and 27, respectively. They liked each other and did what young people in Pakistan are forbidden, by law and social convention, from doing. They fell in love and entered into a relationship outside of marriage. MF fell pregnant. In June 2017 AB returned to his studies in the UK, leaving MF to try and persuade her father to permit them to marry. Her attempts were unsuccessful. Her father and brother were furious and threatened to kill both MF and AB. They insisted that she terminate the pregnancy. She was subjected to threats of violence and intimidation. She fled her family home and in October 2017 arrived in the UK on a student visa. The couple's first child was born in the UK in February 2018. MF's family have now disowned her, whilst maintaining the threat that should she and AB return to Pakistan they will kill them.
4. All of that is now accepted as fact. The evidence about it was found by the First-tier Tribunal to be credible and unembellished, and wholly consistent with the country background material. Those findings are unchallenged in this appeal. It appears to have been accepted by the Tribunal that the reaction of MF's family presents the couple with a "insurmountable obstacles" to their resuming family life in the area of Pakistan from which she comes.
5. The First-tier Tribunal was however alive to the possibility that the couple could avoid these obstacles by going to live somewhere else in Pakistan. For that reason it turned to address the second limb of their case. That was that the birth of their child outside of wedlock presents ongoing problems for them in the future. The system of identity cards and official documentation in Pakistan would require them to obtain an identity card for their daughter, born in February 2018. In order to obtain such a card the couple are required to declare the date of their marriage, providing proof where possible. They did not get married until the 2nd January 2019. It would therefore be immediately obvious to any official dealing with the family that the child was illegitimate at birth. The country background evidence before the Tribunal - principally the Secretary of State's own Country Information Notes (CINs) - indicated that this was a crime for which the parents could be imprisoned, or fined, or both. On that basis the Tribunal found this to be another very significant obstacle faced by the couple, and one that would pertain throughout Pakistan. The appeal was allowed with reference to paragraph EX.1 of the Appendix FM of the Immigration Rules.

6. The Secretary of State sought permission to challenge the decision below on two grounds.
7. The first was that the Tribunal erred in its assessment of the couple's credibility because it did not weigh against them their 'failure' to claim asylum. Permission to appeal on this ground was expressly refused by Upper Tribunal Judge Macleman on the 16th May 2022.
8. The second ground, upon which permission has been granted, concerns the Tribunal's interpretation of the country background material. It is contended on the Secretary of State's behalf that the Tribunal has made a mistake of fact/ has otherwise misinterpreted the CINs so that the 'insurmountable obstacles' found to arise from the need to register the child are in fact non-existent.

Discussion and Findings

9. The First-tier Tribunal's reasoning is set out between its paragraphs 55 and 70. It starts from the uncontested proposition that children born outside of wedlock in Pakistan are regarded as *harami* or 'forbidden in Islam' and that they and their parents can face "huge social stigma". If the truth about this family is known the Respondents could also face legal penalties. With these facts found, the Tribunal proceeds to make two findings of fact about the consequences. The first is the possibility that the child's illegitimacy could be discovered because of the 'late registration' of the marriage. The second is that it could be discovered when she, or her parents, need to register in order to obtain identity cards. Before me it became clear that although those two findings are perhaps difficult to extricate discretely from the First-tier Tribunal decision, they can and should be considered separately for the purpose of this onward appeal.

Late Registration

10. The First-tier Tribunal begins its deliberations by directing itself to the evidence in the CINs concerning what is known as 'presumed marriage'. This is a legal device arising from the fact that in Pakistan there are, in effect, two personal law systems existing in parallel. Although the Muslim Family Law Ordinance of 1961 (as amended) requires the registration of marriage etc, in reality Pakistani citizens can marry and divorce in accordance with customary practice derived from classical Islamic law, under which no formality is required. In Islam a *nikah* is a simple oral contract between a man and a woman, and there is no requirement for registration or paperwork. In drafting the MFLO the Pakistani state realised that while there was social value in legally requiring registration (not least the protection of women) it could not legitimately declare an unregistered *nikah* invalid. Thus in

Pakistan couples continue to contract Islamic marriages which are not registered with the authorities. The result of this is that people who are actually married are sometimes unable to prove it. The doctrine of 'presumed marriage' was therefore developed to protect their position: it means that they will be accepted as being married where, for example, they have lived together for a long time, have children etc. In those circumstances the law provides for 'late registration' of the marriage. However, in order to deter people from taking this path the MFLO still provides that a fine, or imprisonment, or both, may be levied for the failure to register the marriage at the time. The Tribunal found that the risk of such penalty amounted to an insurmountable obstacle.

11. The Secretary of State appeals this finding on the ground that the Tribunal has misunderstood the position. There is no question of presumed marriage here since the couple can prove that they are now in fact married: they got married on the 2nd February 2019. They cannot now be expected to conceal that fact to pretend to an official in Pakistan that they contracted an oral *nikah* before their daughter was born. The doctrine of presumed marriage, and late registration, is therefore of no consequence to them.
12. Before me Mr Khoslar accepted that this was indeed the case. He accepted that this finding could not properly stand, since his clients had no intention of trying to register a presumed marriage. As the Secretary of State rightly notes, they cannot do so, for they are now in fact already married. I therefore set aside that part of the First-tier Tribunal's decision by consent.

Identity Cards

13. The second plank of the Tribunal's reasoning turned on this: that Pakistani bureaucracy is such that at some point this family are going to have to deal with an official who is going to want to know the date of marriage and the date of birth of their children.
14. This finding is not expressly challenged in the written grounds. The final passage of the grounds reads:

"It is further submitted that it is clear from the CPIN extracts quoted that the child will not be considered illegitimate as the couple have resided together throughout as man and wife, and the male appellant has never denied paternity, as such the finding that the child will be considered such has influenced the outcome of the appeal and caused the FTTJ to reach a flawed conclusion which is misdirected in law"
15. To my reading it is the Secretary of State who has here misunderstood the country background material. Just because the couple have lived together since the child's birth, and AB has never denied paternity, this does not mean that the "child will not be

considered illegitimate". She plainly is, according to Pakistani law. This ground is therefore without merit.

16. That said, in her oral submissions Mrs Nolan argued that this aspect of the Tribunal's reasoning could not be easily extricated from its findings on the matter of late registration. If I am satisfied that the finding about identity cards stands apart from the findings on late registration, then she submitted that the findings reached by the Tribunal were in any event not supported by the background material. Her central point was this: that nothing in the background material supports a finding that the child's illegitimacy will ever be discovered.
17. In his response Mr Khoslar took issue with that, taking me to several passages which he said, properly understood, meant that such a risk must pertain. Moreover, he urged me to find that this case was not dependent upon the child's status being discovered at all. The fact that the family would be required to live with the fear of that would be sufficient to establish an obstacle.
18. I have had regard to the two CINs put by the parties before the First-tier Tribunal: *Pakistan: Documentation* (version 2.0, published March 2020) and *Pakistan: Women fearing gender based violence* (version 4, February 2020).
19. For the Secretary of State Mrs Nolan drew my attention to paragraph 2.1.5 of the *Documentation* CIN which sets out the information that is contained on an adult identity card. It does not include the date of marriage, or whether your parents are married. I accept that this is the case. That is not to say, however, that this is not information that may be required in order to obtain the card, or in other bureaucratic processes.
20. I start with the position as it was before the Respondents left Pakistan. The *Documentation* CIN [at 1.1.2] confirms that "CNICs record the holder's legal name; gender (male, female or transgender); father's name (or husband's name for a married female); identification marks; date of birth; unique 13-digit number; family registration ID number; current address; permanent address; date of issue; date of expiry; signature; photo; and thumbprint". As she was over 18 at the date that she left Pakistan, and at that stage unmarried, I assume that MF's CNIC bears her father's name.
21. In order to return to Pakistan with her husband and children MF will need to obtain passports for her children. A Pakistani passport will only be issued to citizens with a valid identity card [1.1.5]. She will therefore need to obtain an identity document for her children. These can be issued by consular officials and for children under the age of 18 will be in the form of a Child Registration Certificate (CRC) [2.3.1]. It can be issued "providing they have a birth certificate and the parent is the holder of a national identity card". MF will be able to

provide a birth certificate saying that her daughter was born in the UK in February 2018, but obviously her current CNIC will show her as unmarried. At Annex B of the *Documentation* CIN a series of questions and answers put to a legal consultancy in Islamabad by the British High Commission is reproduced. One of those questions and answers reads as follows:

2. If a child of Pakistani origin is born in the UK, can a CRC or CNIC be obtained on production of a UK birth certificate?

Registration of birth with the Pakistan Mission in the UK in accordance with Section 5 of the 1951 Act will probably be possible on the basis of a UK birth certificate. However, to obtain CRC and CNIC, applications have to be made on forms prescribed under the 1952 Rules, which forms require details/documentary evidence of details of both parents. For a CRC a birth certificate is valid documentary evidence but issuance of CRC will not only depend on production of the birth certificate as the requisite Form will also have to be filled in.

22. This passage does not expressly say that a marriage certificate would need to be produced at this stage, but it is inconceivable to me that it would not. As I note, here is a child with a mother whose CNIC describes her as unmarried, and to get her a card they would need to complete forms requiring “details/documentary evidence of details of both parents”. At this stage MF could do one of two things: lie and say that a *nikah* was conducted prior to the marriage but is undocumented, or she could produce the marriage certificate showing that she has been married by UK law but only a year after the birth of her child. She is therefore in a position of having to reveal, before she even gets back to Pakistan, to the Pakistani authorities that she has committed an offence under Pakistani law. If the only question left in this appeal is whether or not the child’s illegitimacy is likely to be discovered, thus exposing the family to the risks identified by the First-tier Tribunal, then it is a question that is answered before they even leave the UK.

23. For the sake of completeness I note that once back in Pakistan MF will have to update her CNIC to show her husband’s name [see also 2.6.1]. New CNICs must be applied for in person at a NADRA Registration Centre (NRC) [2.1.2]. Although the CIN is silent on the matter, I must assume that in order to obtain a card saying that you are married, the female applicant will need to provide some proof that this is indeed the case: Mr Khoslar drew my attention in this regard to the evidence elsewhere in the CINs that women from minority communities face this precise difficulty because their marriages cannot be registered under the MFLO [*Documentation* at 2.6.1 on Ahmadis and *Women* at 4.7.3 in respect of Christian marriage]. Once again, MF’s status will come under bureaucratic scrutiny.

24. I am therefore satisfied that on the evidence before it the First-tier Tribunal was rationally entitled to conclude on balance that there

was a likelihood of this family's history becoming known to the authorities in Pakistan. There being no challenge to its finding that such discovery would present the family with insurmountable obstacles, it follows that its decision must be upheld.

Anonymity

25. I am mindful that this decision turns on private information about a child. Having had regard to that child's best interests, and Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private, I am therefore satisfied that it would be appropriate to make an order for anonymity in the following terms:

“Unless and until a tribunal or court directs otherwise, the Respondents are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies to, amongst others, both the Appellant and the Respondents. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions and Directions

26. The decision of the First-tier Tribunal is upheld, and the Secretary of State's appeal dismissed.
27. There is an order for anonymity.

Upper Tribunal Judge Bruce
22nd October 2022